



REPUBLIC OF KENYA



**In re Estate of Peter Kipkurgat Kuto (Deceased) (Succession Cause
155 of 2019) [2023] KEHC 26650 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26650 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 155 OF 2019
RN NYAKUNDI, J
DECEMBER 20, 2023**

IN THE MATTER OF THE ESTATE OF THE LATE PETER KIPKURGAT

BETWEEN

PRISCA TARKWEN RUTO PETITIONER

AND

ABRAHAM KIPRUTO ROTICH 1ST OBJECTOR

METHUSELAH KIPKEMBOI KUTO 2ND OBJECTOR

RULING

1. What is pending before this court is a Summons for Confirmation of grant dated 18th July 2023 seeking the following orders;
 1. That the Grant of letters of Administration intestate made to Prisca Tarkwen Ruto, Elizabeth Jepchumba Kuto and Methusellah Kipkemboi Kuto on 16th December, 2022 be confirmed.
 2. That the costs of this application be sourced from the estate.
2. The application is premised on the grounds set out therein and the contents of the affidavit of the petitioner sworn in support of the summons.
3. The Petitioner was granted letters of administration of the estate intestate on 16th December 2022 alongside Elizabeth Chepchumba Kuto and Methusellah Kipkemboi Kuto.
4. The deceased was survived by the following persons;
 1. Elizabeth Chepchumba Kuto - wife
 2. Gidion Kiplimo Kuto - son - adult
 3. Methusellah Kipkemboi Kuto - son - adult



4. Rhoda Jepkemei Kuto - daughter - adult
 5. Kipchumba Kuto - son - adult
 6. Sally Jebet Kuto - daughter - adult
 7. Naftali Kiprotich Kuto - son - adult
 8. Rebecca Jemurgor Kuto - daughter - adult
 9. Milka depleting Kuto - daughter - adult
 10. James Kiptanui Kuto - son - adult
 11. John Kimutai Kuto - son - adult
 12. Nerious Cherotich Tanui - daughter - adult
 13. Nora Jepkosgei Tanui - daughter - adult
 14. Cleophas Kipchirchir Kirwa - son - adult
 15. Naomi Jekemei Kuto - daughter - adult
 16. Nancy Jesang - daughter - adult
 17. Jacob Kipruto Kuto - son - adult
 18. Abraham Kipruto Rotich - son - adult
 19. Eunice Jepngetch Kuto - daughter - adult
 20. Philip Kip turn Kurgat - son - adult
 21. Caroline Jepkoech Kuto - daughter - adult
 22. Mathew Kiplagat Kuto - son - adult
 23. Andrew Kimeli Rotich - son - adult
 24. Martha Jeptoo Kuto - daughter - adult
 25. Nickson Kipchirchir - son - adult
 26. Grace Cheron Barchigei - sister - adult
5. The estate of the deceased is comprised of the following;
1. Award of compensation of Kshs. 15,198,000.00 held at Kenya Commercial bank Account No. 1281670014 in the name of Naphtali Kiprotich Kuto on behalf of the estate of the late Peter Kipkurgat Kuto.
 2. IR. No. 8267 LR. 772/8 measuring 100 acres.
6. The petitioner proposed that the property be shared as follows;



Name	Description of Property	Share of Estate
Elizabeth Chepchumba Kuto Gedion Kiplimo Kuto Methuselah Kipkemboi Kuto Rhoda Jepkemei Kuto Kipchumba Kuto Sally Jebet Kuto Naftali Kiprotich Kuto Rebecca Jemurgor Kuto Milka Jepleting Kuto James Kiptanui Kuto John Kimutai Kuto Nerious Cherotich Tanui Nora Jepkosgei Tanui Cleophas Kipchirchir Kirwa Naomy Jekemei Kuto Nancy Jesang Jacob Kipruto Kuto Abraham Kipruto Rotich Eunice Jepngetich Kuto Philip Kiptum Kurgat Caroline Jepkoech Kuto Mathew Kiplagat Kuto Andrew Kimeli Rotich Martha Jeptoo Kuto Nickson Kipchirchir Grace Cheronno Barchigei	Award of compensation of Kshs. 15,198,00.00 held at Kenya Commercial Bank Account No. 1281XXXX14 in the name of the late Peter Kipkurgat Kuto - Deceased	To be shared amongst all 3 houses and to be held in a trust capacity Methusella Kipkemboi Kuto 1 st house, Prisca Tarkwen Ruto for the 2 nd House and Elizabeth Jepchumba Kuto for 3 rd House for themselves and other beneficiaries each house in the sum 3, 224,032, Kshs. 3,907,968/- and Kshs. 3,224,032/-
Elizabeth Chepchumba Kuto Gedion Kiplimo Kuto Methusellah Kipkemboi Kuto Rhoda Jepkemei Kuto Kipchumba Kuto Sally Jebet Kuto	IR No. 8267 LR 772/8 measuring 100 acres	1. Grace Jerono Barchgei – 2 acres 2. The balance of 98 acres to be shared equally amongst the 3 houses to be held in trust by Methusella Kipkemboi Kuto 1 st house, Prisca Tarkwen



Naftali Kiprotich Kuto		Ruto for the 2 nd House and Elizabeth Jepchumba Kuto for 3 rd House for themselves and other beneficiaries with each household getting 33.33% of the whole piece of land.
Rebecca Jemurgor Kuto		
Milka Jepleting Kuto		
James Kiptanui Kuto		
John Kimutai Kuto		
Nerious Cherotich Tanui		
Nora Jepkosgei Tanui		
Cleophas Kipchirchir Kirwa		
Naomy Jekemei Kuto		
Nancy Jesang		
Jacob Kipruto Kuto		
Abraham Kipruto Rotich		
Eunice Jepngetich Kuto		
Philip Kiptum Kurgat		
Caroline Jepkoech Kuto		
Mathew Kiplagat Kuto		
Andrew Kimeli Rotich		
Martha Jeptoo Kuto		
Nickson Kipchirchir		
Grace Cheronno Barchigei		

7. The summons for confirmation of grant was opposed vide a replying affidavit dated 28th August 2023, sworn by Grace Jerono Barchigei, a sister to the deceased who stated that she is a beneficiary to the estate. She averred that she moved to stay with her brother on LR 777/8 which is their ancestral land, residing in the house of her brother's third wife, Elizabeth Kuto. In the year 2000, the deceased divided LR 772/8 amongst his three wives, thirteen children and herself before he passed on with each of them receiving 5 acres. In 2002 she moved onto her portion and started farming activities. In 2016, she was served with a notice by the National lands Commission to vacate her portion to pave way for the Eldoret bypass. As a result, she was compensated with 2 awards being an award for development amounting to Kshs. 1,009,300 and for her portion of land amounting to Kshs. 8,315,804.
8. She stated that the compensation for development she had done on her land was deposited in her personal account but the compensation for the entire portion was put in a joint account together with compensation for the portions that belonged to the 2nd and 3rd wives. Reason being that no transfer had been effected by the deceased and therefore the land was still in the name of the deceased. The deponent stated that the proceeds of her award were now included as part of the estate of the deceased and as such the mode of distribution should not be allowed as her compensation for her portion of the land has been included in the share of the heirs. Prior to his death, the deceased had given her 5 acres which were later acquired by the NLC and the mode of distribution only allocates her 2 acres out of



LR No. 772/8. She urged the court to either allocate her 5 acres from LR No. 77.8 or the portion of compensation from the National Land Commission which amounts to Kshs. 8,315,804.

Analysis & Determination

9. Upon considering the application and the response thereto, the following issues emerge for determination;
 1. Whether the deceased had gifted portions of his property to the deceased
 2. Whether the grant should be confirmed
 3. Distribution of the estate

Whether the deceased had gifted portions of his estate to the deceased

10. The sister of the deceased was of the position that she was gifted a portion of the land known as LR 722/8 as the deceased had divided it between his three wives, thirteen children and herself before he passed on. It is this gift of land that she claims is a basis for her to be granted compensation for her portion of the land that the National Land Commission acquired.
11. In order for her claim to the compensation award, specifically for her portion of land, to succeed, the respondent must prove to the court that the land was gifted to her by the deceased. It is not enough to merely state the same. A gift *inter vivos* is one that that is made between living persons.
12. I am guided by the decision of Nyamweya J (as she then was) in her decision in the case of *Re Estate of the Late Gedion Mantbi Nzioka (Deceased)* [2015] eKLR, where she stated as follows:

" In law, gifts are of two types. There are the gifts made between living persons (gifts *inter vivos*), and gifts made in contemplation of death (gifts *mortis causa*). Section 31 of the *Law of Succession Act* provides as follows with respect to gifts made in contemplation of death:

.../For gifts *inter vivos*, the requirements of law are that the said gift may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of resulting trusts or the presumption of Gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts *inter vivos* must be complete for the same to be valid."

13. It follows that for a gift *inter vivos* concerning land to be valid, the gift must be by way of registered transfer, in writing or by declaration of a trust. The respondent has not provided any of these as proof that the deceased specifically gave her 5 acres of the land. She confirmed that the land was in the name of the deceased and that he had never transferred the same. It follows that the gift *inter vivos* did not meet the requirements and as such, she has no claim to the award of Kshs. 8,315,804.00.

Whether the grant should be confirmed

14. The respondent opposed the application for confirmation of grant on the basis that she was allocated 2 acres of land from LR No. 772/8 yet the deceased had given her 5 acres which were acquired by the National land Commission. The court granted letters of administration on 16th December 2022 and the petitioner proposed a mode of distribution in the supporting affidavit to the application.



15. As I have already established that there was no gift *inter vivos*, it follows that the respondents claim of the 5 acres allocated to her have no bearing in this matter. I note that the petitioners chose to include her in the distribution of the estate.
16. Section 71 of the [Law of Succession Act](#) provides;
 1. After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.
17. I have considered the application and the certificate of grant and it is my view that the same is ripe for confirmation as the statutory period has lapsed. I find no reason as to why the grant should not be confirmed.

Distribution of the estate

18. The applicant has provided a proposed mode of distribution. In the proposed mode of distribution, I note that the applicant has proposed that the money be held in trust for the three houses and further, that other than the 2 acres that are to be given to the respondent, the rest of the properties be held in trust by the administrators of the estate. The beneficiaries of the estate are all adults therefore, it perturbs this court as to why the estate should be held in trust for any of the beneficiaries. There are no reasons given as to why the beneficiaries require their share of the estate to be held in trust and therefore I find no merit in allowing the same.
19. Section 40 of the Law of Succession provides;
 - (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.
20. It follows that in the unit system, each of the beneficiaries are to be treated as an equal unit and receive an equal share of the estate. I hereby direct that the estate be distributed as follows;



Name	Description of Property	Share of Estate
Elizabeth Chepchumba Kuto Gedion Kiplimo Kuto Methuselah Kipkemboi Kuto Rhoda Jepkemei Kuto Kipchumba Kuto Sally Jebet Kuto Naftali Kiprotich Kuto Rebecca Jemurgor Kuto Milka Jepleting Kuto James Kiptanui Kuto John Kimutai Kuto Nerious Cherotich Tanui Nora Jepkosgei Tanui Cleophas Kipchirchir Kirwa Naomy Jekemei Kuto Nancy Jesang Jacob Kipruto Kuto Abraham Kipruto Rotich Eunice Jepngetich Kuto Philip Kiptum Kurgat Caroline Jepkoech Kuto Mathew Kiplagat Kuto Andrew Kimeli Rotich Martha Jeptoo Kuto Nickson Kipchirchir Grace Cheron Barchigei	Award of compensation of Kshs. 15,198,00.00 held at Kenya Commercial Bank Account No. 1281XXXX14 in the name of the late Peter Kipkurgat Kuto - Deceased	Kshs. 584,538/- each
Elizabeth Chepchumba Kuto Gedion Kiplimo Kuto Methusellah Kipkemboi Kuto Rhoda Jepkemei Kuto Kipchumba Kuto Sally Jebet Kuto	IR No. 8267 LR 772/8 measuring 100 acres	3.85 Acres each



Naftali Kiprotich Kuto		
Rebecca Jemurgor Kuto		
Milka Jepleting Kuto		
James Kiptanui Kuto		
John Kimutai Kuto		
Nerious Cherotich Tanui		
Nora Jepkosgei Tanui		
Cleophas Kipchirchir Kirwa		
Naomy Jekemei Kuto		
Nancy Jesang		
Jacob Kipruto Kuto		
Abraham Kipruto Rotich		
Eunice Jepngetich Kuto		
Philip Kiptum Kurgat		
Caroline Jepkoech Kuto		
Mathew Kiplagat Kuto		
Andrew Kimeli Rotich		
Martha Jeptoo Kuto		
Nickson Kipchirchir		
Grace Cheronno Barchigei		

DATED, SIGNED AND DELIVERED AT ELDORET THIS 20TH DAY OF DECEMBER, 2023

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R. NYAKUNDI

JUDGE

